IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 439 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?**-No.**

2 To be referred to the Reporter or not ?**-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
BABUBHAI RAMUBHAI BHARVAD & 3 - Defendant(s)

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Appearance :
MR HEMANT S SHAH for Appellant(s) : 1,
RULE SERVED BY DS for Defendant(s) : 1 - 4.
MR MANAN A SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/03/2007

ORAL JUDGMENT

Admit. Mr.Manan Shah, learned advocate for the respondent waives notice of admission.

1. This appeal is directed against the judgment and award passed by the Motor Accident Claim Tribunal (Auxiliary), Fast Track Court No.4, City Civil Court, Ahmedabad dated 6/2/2006 in Motor Accident Claim Petition No.71 of 1999. By the said award, the Claim Tribunal has granted compensation of Rs.3,16,000/- together with interest at the rate of 7.5 per cent per annum from the date of filing of the petition till realization and proportionate cost to respondent no.1.

2. The accident in question occurred on 10/5/1998. Respondent no.1 was traveling in a tanker bearing registration no.GJ-4-U-9595. When the tanker reached near Kerala village on Bagodara-Bavla highway, it collided with luxury bus bearing registration no.MM-12-RA-7579. Respondent no.1 received serious injuries. He therefore, preferred the aforesaid petition under the provisions of Motor Vehicles Act for obtaining compensation of Rs.2,50,000/-. Claim was contested by the appellant and other respondents. On the basis of the material produced before it, the Claim Tribunal has given finding that the accident occurred due to

the negligence of driver of the luxury bus. The said bus was insured with the appellant. The Tribunal also assessed the compensation at Rs.3,16,000/- and made the award in aforesaid terms. Hence, this appeal.

3. I have heard Mr.Hemant Shah, learned advocate for the appellant and Mr.Manan Shah, learned advocate for respondent no.1, the original claimant. Mr.Hemant Shah, has assailed the judgment on the ground that the compensation awarded to respondent no.1 is excessive and it is required to be reduced. According to him, under the head of loss of prospective income, the Tribunal has awarded higher amount than the amount which can be worked out on the basis of structured formula. According to him, even under the head of pain, shock and suffering, exorbitant amount has been awarded. Lastly, he has submitted that there was head-on collision between two vehicles and driver of the tanker was equally responsible for causing the accident but the Tribunal has exonerated him. This submission has been made by Mr.Hemant Shah since the Tribunal had granted permission to the appellant to defend its

interest on the ground of negligence also. As against that, Mr.Manan Shah, learned advocate for respondent no.1 has supported the judgment of the Tribunal.

4. It may be noted here that the parties in this appeal i.e. appellant and respondent no.1 have made effort to settle the matter and have agreed that the award of Rs.75,000/- be deducted from the total award amount. However, there is small difficulty since the appellant desires that Rs.75,000/- together with interest and proportionate cost on the said amount be deducted, whereas respondent no.1 agrees for deduction of Rs.75,000/- in all. They have requested the Court to resolve the difference after considering the merits of the case.

5. I have closely perused the material on record. Mr.Hemant Shah, learned advocate for the appellant has read out the oral evidence adduced before the Tribunal including that of respondent no.1. He has stated that he was earning about Rs.2,500/- to Rs.3,000/- per month by doing labour work. He has

further stated that because of the injuries suffered by him, he was not able to carry out any work and suffered substantial financial loss. Mr.Hemant Shah has assailed this evidence only on the ground that there is no documentary evidence produced by respondent no.1 to substantiate his say. It is difficult to understand how a labourer can produce documentary evidence to establish his earning. It is also difficult to understand that his employer would oblige him by issuing certificate about his salary or daily wages. There may be some exaggeration in the figure given by him of his monthly income. But keeping in view, the prevalent minimum wages in those days, the figure of Rs.2,000/- per month adopted by the Tribunal as the income of respondent no.1 cannot be said to be unreasonable. There is no need to disturb this finding. It may also be noted here that the injuries suffered by respondent no.1 were so serious that his spleen had to be removed and in the opinion of the Doctor, he had suffered permanent disability to the extent of 70 per cent. It is therefore, very natural that respondent no.1 would not be able to generate income which he was

earning prior to the accident. Therefore, in my opinion, the Tribunal has not committed any error in determining the loss of prospective income on the basis of Rs.2,000/-.

6. So far as the compensation under the head of pain, shock and suffering is concerned, the medical evidence shows that respondent no.1 had suffered multiple fractures and also serious injuries to the internal organs of the body. Spleenectomi had to be done. In view of the same, Rs.25,000/- awarded under the head of pain, shock and suffering cannot be said to be beyond proportion or on the higher side. Naturally when these were the injuries and he had to be hospitalized for long, he must have incurred substantial expenses towards medical treatment also. In view of the same, by and large, the quantum of compensation determined by the Tribunal appears to be just and fair. However, since the original claim was of Rs.2,50,000/- and no formal application had been made for enhancement of the claim, it appears that respondent no.1 has agreed to forgo the amount of Rs.75,000/- from the total compensation. Even after the hearing, it may

be said to the credit of respondent no.1 that he has not backed out from the proposal of settlement given by him. In view of the same, the award is required to be modified in following terms:

> The Tribunal is directed to deduct the sum of Rs.75,000/- from the amount deposited and rest of the amount be disbursed in accordance with its direction as contained in the impugned judgment and the operative portion thereof. With this modification, the appeal stands disposed of with no order as to costs.

(Akshay H. Mehta, J.)

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